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**BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

Paper No. 18

Application Number: 09/589,973
Filing Date: June 08, 2000
Appellant(s): HANSEN ET AL.

Derrick G. Hamlin
For Appellant



**EXAMINER'S ANSWER**

This is in response to the appeal brief filed 8/21/2003.

***(1) Real Party in Interest***

A statement identifying the real party in interest is contained in the brief.

***(2) Related Appeals and Interferences***

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

***(3) Status of Claims***

The statement of the status of the claims contained in the brief is correct.

***(4) Status of Amendments After Final***

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

***(5) Summary of Invention***

The summary of invention contained in the brief is correct.

***(6) Issues***

The appellant's statement of the issues in the brief is correct.

***(7) Grouping of Claims***

The rejection of claims 1-28 stand or fall together because appellant's brief does not include a statement that this grouping of claims does not stand or fall together and reasons in support thereof. See 37 CFR 1.192(c)(7).

***(8) Claims Appealed***

The copy of the appealed claims contained in the Appendix to the brief is correct.

***(9) Prior Art of Record***

| | | |
|---|---|---|
| 5555595 | LIGMAN | 09/1996 |
| 5386612 | SHAM | 08/1994 |

Claims 1-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Miracle et al. (US 5,576,282), and further in view of Ligman (US 5,555,595) or Sham (US 5,386,612).

Miracle claims a color safe bleaching containing a peroxygen source comprises a preformed peracid compound selected from the group consisting of percarboxylic acids and salts, percarbonic acids and salts, perimidic acids and salts, peroxymonosulfuric acids and salts, and mixtures thereof or perborate compounds, percarbonate compounds, perphosphate compounds and mixtures thereof and a bleach activator, wherein said bleach activator is selected from the group consisting of tetraacetylethylenediamine, sodium decanoyloxybenzene sulfonate, sodium nonanoyloxybenzene sulfonate, sodium octanoyloxybenzene sulfonate, (6-octanamido-caproyl)oxybenzenesulfonate, (6-nonanamido-caproyl)oxybenzenesulfonate, (6-decanamidocaproyl)-oxybenzenesulfonate, and mixtures thereof (col. 37, lines 34-57). The reference teaches the preferred embodiment may contain perfumes and is good for use in laundry detergents especially, liquid fine-fabric detergents, machine dishwashing agents and car or carpet shampoos (col. 11, lines 19-46). The use of acrylic/maleic-based copolymers and glycols is also taught (col. 21 lines, 31-52 and col. 24, lines 1-21).

The primary reference is deficient, as it fails to teach a carpet-cleaning machine employing the cleaning solution disclosed. The primary reference does indicate that the composition is applicable to many types of cleaning operations, such as shampooing carpets. Therefore, one would be motivated to employ one of the following carpet cleaning machines to clean a carpet with the carpet shampoo of the reference.

Ligman discloses a cleaner unit for carpet and upholstery and the like includes an adjustable power control so that electrical power usage can be set in accordance with available circuit capacity. The cleaner unit includes multiple electrical loads such as a vacuum motor, a pump for delivering a cleaning fluid to a cleaning head or tool, and one or more resistance heaters for heating the cleaning fluid, wherein these loads are adapted for plug-in connection by one or more power cords to a standard domestic power circuit. An ammeter permits the current load to be monitored. In the preferred form, the adjustable power control is associated with one of the resistance heaters and permits the heater current load to be variably set according to the available current capacity of the power circuit. (Abstract)

Although the reference fails to teach that the cleaning solution is heated to a specific temperature, it does indicate that the temperature may be adjusted to a desired temperature. Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was

made to practice the instantly claimed method using the carpet cleaning solution of Miracle with the carpet cleaner of Ligman.

Sham discloses a vacuum cleaning apparatus is provided which includes a housing having a handle portion and a nozzle portion. A reservoir is defined in the housing for retaining cleaning solution or water, and a heating unit is associated with the reservoir for heating the liquid so as to generate steam for delivery to a flat surface such as a window to be cleaned. A squeegee assembly is mounted to the housing adjacent the nozzle portion for wiping the window after liquid has been deposited thereon. A motor driven fan assembly is disposed within the housing in communication with the nozzle portion for drawing excess liquid and debris into the nozzle portion. The nozzle portion defines structure for separating and containing the liquid, which is drawn into the apparatus. (abstract)

Although the reference fails to teach that the cleaning solution is heated to a specific temperature, it does indicate that the solution is steamed and depending on the solvent used the temperature would fall within the claimed ranges. Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to practice the instantly claimed method using the carpet cleaning solution of Miracle with the carpet cleaner of Sham.

***(11) Response to Argument***

The Appellants argues that "**Issue 1 - The invention of claims 1-28 are patentable over the alleged combination of Miracle et al. '282 in view of either Ligman '595 or Sham '612**" for the reasons cited in " A. Issue 2", "B - Issue 3"' and "C. Issue 4" below.

" **A. Issue 2 – The alleged combination of Miracle et al. '282 with Ligman '595 or Sham '612 is inappropriate because there is no suggestion for the alleged combination.**"

The Appellants argues "there is no hint or suggestion in Miracle et al. '282 of the use of a carpet shampoo in a method according to the invention." The Appellants acknowledges that the reference "incidentally discloses that the disclosed bleach compositions can be used in carpet shampoos." It is well known to one of ordinary skill in the art to use a carpet-cleaning machine with a carpet shampoo, because carpet shampoos or cleaning compositions are made for carpet cleaning machines. Furthermore, both Ligman '595 and Sham '612 disclose that a cleaning composition may be used with their conventional extractors. The examiner has not tried to combine a laundry detergent with a carpet cleaner nor a carpet cleaning composition with a laundry machine. The examiner has combined a reference, which suggest a carpet shampoo, with a reference, which employs such a composition in analogous art. Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to use the composition of Miracle a carpet shampoo for use in a carpet-cleaning machine.

> The test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981).

The Appellants argues the "Miracle et al. '282 patent is principally related to laundry detergents" and "it does not disclose that such shampoos can be used in the conventional extractors". Although the reference does teach that the material may be a laundry detergent, that teaching would not negate the Appellants teaching of a carpet shampoo. Furthermore, the Appellants argument would limit the invention to only the principle compositions disclosed, when Miracle clearly suggests several other uses for the composition. Additionally, the reference disclosed that material may be used in a carpet shampoos and carpet shampoos are know to be used with conventional carpet-cleaning machines.

The Appellants further argue the Miracle reference fails to disclose "the bleach boosters can be combined with a carpet cleaning composition that are then applied to a floor surface and then recovered from the floor surface by suction." The primary reference recites the composition and the secondary reference recites a cleaning apparatus, which employs the composition of the primary reference. The prior art reference is not anticipatory and relies on the secondary references of either Ligman '595 or Sham '612 to teach that a cleaning composition may be used with both

conventional extractors. However, since the reference merely suggest that the composition be used in a carpet shampoo which is known to be used in a carpet-cleaning machine either Ligman '595 or Sham '612 is relied on.

In response to Appellants 's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.,* 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

The Appellants argue that they "believe that the bleach compositions of Miracle would not in fact be useful in carpet shampoos despite the incidental disclose in the Miracle et al. '282 reference because they would tend to lighten the carpet or otherwise strip color from a carpet", as Appellants' method claims do not recite a bleach booster. Although this may be true in some cases, that may be the desired effect and in some cases it may not. Regardless, the combination of the two references would render the instant claims obvious still the same. Furthermore, the Appellants uses the open claim language comprising and has failed to demonstrate that a bleach booster would in fact strip color from the carpet. The Appellant has merely speculated, offering what he "believes" will be the effect to a carpet. However, Appellant has not shown on record that said beliefs are true.

The Appellants argue the disclosure of the composition may be a carpet shampoo in the Miracle reference is an incidental disclosure, as it is not enabling, as it fail to disclosure of a carpet cleaning solution, any carpet cleaning examples, any carpet

cleaning claims, any test conducted on cleaning nor any credible support for the alleged combination of references in any of the references.

The test for obviousness is what the teachings of a prior art reference as a whole would have suggested to one of ordinary skill in the art. ***See In re Young***, 927 F.2d 588, 591, 18 USPQ2d 1089, 1091 (Fed. Cir. 1991). All of the disclosure of a prior art reference must be considered for what it would have fairly suggested to one of ordinary skill in the art. ***In re Lamberti***, 545 F.2d 747, 750, 192 USPQ 278, 280 (CCPA 1976). Such consideration is not limited to the specific details or examples described in the prior art reference. ***See In re Bascom***, 230 F.2d 612, 109 USPQ 98 (CCPA 1956). Therefore, the combination of the primary and secondary references as a whole would have led one of ordinary skill in the art to employ the composition of Miracle et al. '282 with Ligman '595 or Sham '612 with a reasonable expectation of successfully obtaining a method for cleaning a carpet. ***See Merck & Co. V. Biocraft Labs.***, 874 F.2d 804, 807, 10 USPQ2d 1843, 1846 (Fed. Cir.), ***cert. Denied***, 493 U.S. 975 (1989); ***In re Susi***, 440 F.2d 442, 444, 169 USPQ 423, 425 (CCPA 1971). Accordingly, the rejection is maintained.

The Appellants argue Miracle's bleach boosters include heavy surfactants that would leave a substantial amount of cleaning solution in the carpet and would result in a significant resoling problem because significant amount of rinsing may be required to remove heavy detergents. The Appellant then asserts that the detergent composition must be formulated in such a way that it cleans the carpet, dissolves the dirt and

organic stains and can be removed with one or two passes with the extractor as described in the Declaration, filed 4/29/2003, of Jesse J. Williams and Eric Hansen under 37 C.F.R. 1.132. The Appellant has conducted no experiment using the composition of Miracle to prove this assertion, nor has the Appellant shown superior or unexpected results over the prior art of reference. The Appellant's also relies on said declaration, which is not commensurate in scope as it argues that the bleaching additive would not be an affective cleaner due to resoling with out testing any (or various) concentrations.

Conversely, the reference clearly teaches that additional components are added based on the nature of the cleaning operation. Miracle teaches that the composition may be a "heavy duty detergent" as Mr. Williams suggest, however, he also teaches that it may also be a "light duty dishwashing agent", a "mouth wash" or "high foam". The Appellant's also relies on said declaration in it's argument that the bleaching composition may lighten a carpet. Similarly, the Appellants has conducted no experiment using the composition of Miracle to prove this assertion, nor has the Appeallant shown superior or unexpected results over the prior art of reference. The Appeallant has also failed to prove that the bleaching additive in all concentrations would lighten a carpet and the instant composition would not. The Appeallant's also relies on said declaration, which is not commensurate in scope as it argues that the bleaching composition may lighten a carpet.

In view of the Mr. Williams Declaration it would still have been obvious to one of ordinary skill in the art at the time the invention was made to practice the instantly

claimed method using the carpet cleaning solution of Miracle with the carpet cleaner of Ligman or Sham, in the absence of contrary.

"**B. Issue 3 - Even of the Examiner has made a prima facia showing of obviousness, this showing has been overcome by evidence of commercial success.**"

The Declaration of Kelli Cain has been considered and is not persuasive. The Appeallant asserts that since Oxiclean, a similar product, has achieved great commercial success, the prima facia case of obviousness is overcome. The examiner disagrees. The Appeallant does not own Oxiclean and the Oxiclean is sold as a generic cleaner which may or may not be used in a manner similar to the claimed invention. The examiner has considered the Appeallants sales of it's BISSELL cleaner and does not believe that it meets the secondary factor requirements of the Graham v. John Deere test which would make it unobvious, therefore the method would have been obvious to one of ordinary skill in the art at the time the invention was made. The Appellant has not achieved the commercial success of Oxiclean. The Appellant cannot rely on Oxiclean's commercial success, as the oxidative component is just a portion of what the Appellants are claiming.

C. "**Issue 4 - The alleged combination of Miracle '282 with either Ligman '595 or Sham '612 does not meet the claimed invention.**"

The rejection of claims 1-28 stand or fall together because appellant's brief does not include a statement that this grouping of claims does not stand or fall together and reasons in support thereof. See 37 CFR 1.192(c)(7).

The Appellants argue the references fail to include the concept of admixing the oxidizing agent with the cleaning solution prior to the step of dispensing the cleaning solution onto the upholstery or carpet surface. In order for the components to be in the composition together, at some point they would have to be mixed, therefore it would be obvious to mix two components that will be in a the same composition. The Appellants argue that with respect to the admixture to be at a temperature in the range of 120-1900F during the dispensing step.

Ligman discloses a cleaner unit for carpet and upholstery with one or more resistance heaters for heating the cleaning fluid. Although the reference fails to teach that the cleaning solution is heated to a specific temperature, it does indicate that the temperature may be adjusted to a desired temperature. Similarly, Sham discloses a vacuum cleaning apparatus is provided which includes a reservoir for heating the liquid, including water, so as to generate steam.

Since both the references disclose the use of water as a solvent, it is clear that the temperature of heated water would have to be from room temp. - boiling. Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to practice the instantly claimed method at ~ 85-212 degree F, since this is the temperature range for heated water. It has been held that discovering an optimum value of a result effective variable involves only routing skill in the art. In re Boesch, 617 F.2d 272, 205 USPQ 215 (CPA 1980).

The Appellants argue With respect to admixture to be mixed with heated air to heat the admixture and further comprise the step of heating the air before the step of mixing the admixture with heated air.

The heating of air to raise the temperature of a composition is conventional and in the absence of showing superior or unexpected results, would have been obvious in view of both of the disclosed heaters. Similarly, the order of mixing will not be given patentable weight in the absence of showing superior or unexpected results.

The Appellants argue there is no teaching of a cleaning solution to include an anionic and/or non-ionic surfactant, an antisoiling agent, and an organic solvent.

Although the reference fails to teach all the claimed components in one inventive example, however it does suggest and disclose the use of all the instantly claimed components, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to create the instantly clamed composition.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

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